

Application No.: 10/666,732Docket No.: 2038-297**REMARKS**

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1, 2, 4-5, 11-12, 15, 18, 22, 24-28 are pending in the application. Independent claims 1 and 12 have been amended to better define the claimed. Claim 22 has been rewritten in independent form and further amended to distinguish the claimed invention from the art. The remaining claims have been either amended to improve claim language or cancelled without prejudice or disclaimer. New claims 27-28 have been added to provide Applicants with the scope of protection to which they are believed entitled. No new matter has been introduced through the foregoing amendments.

The Examiner's rejection of claims 12-18 as being unsupported by the application as filed is noted. In particular, the Examiner alleges that the original disclosure does not support the claim limitation that the elastic and inelastic fibers are permanently bonded together. Applicants respectfully disagree with the Examiner's position, because the specification discloses that the fibers are heat-bonded and a person of ordinary skill in the art would recognize that heat-bonding is permanent. *See* the specification at page 12, line 22, page 28, lines 1 and 12.

The objection to claim 13 is moot as claim 13 has been cancelled.

The Examiner's 35 U.S.C. 103(a) rejections relying on *Kobayashi* and *Billarant* is noted. Basically, the Examiner proposes to replace the *Kobayashi* elastic fibers with the conjugate fibers of *Billarant* to arrive at the claimed invention. *See* the Final Office Action at page 3, the last four lines and page 4, lines 4-6. Applicants respectfully disagree with the Examiner's position for at least the following reasons.

First, it is unclear from the language of the Office Action as to whether the Examiner's "suggestion or motivation" to combine the references, i.e., the combination would make the elastic fibers more easily bonded while still being elastic (page 3, the last line of the Office Action) and facilitate binding of the fibers while maintaining the structural integrity of the fibers (page 4, lines 7-

Application No.: 10/666,732

Docket No.: 2038-297

8 of the Office Action), are found in the references themselves or in the knowledge generally available in the art. Clarification is respectfully requested.

Second, the applied references are not combinable in the manner proposed by the Examiner because *Billarant* teaches away from the proposed combination. Specifically, *Billarant* criticizes the *Kobayashi* type of non-woven fabric, which has a fibrous layer bonded to an elastic layer, as expensive/difficult to make. *See Billarant* at column 1, lines 33-45. Thus, a person of ordinary skill in the art learning of the *Billarant* teaching would not have considered using the technology taught by *Kobayashi* at all, and would not have been motivated to combine *Kobayashi* with *Billarant* as proposed by the Examiner. The person of ordinary skill in the art would have simply adopted the *Billarant* non-woven fabric configuration without considering the Examiner's suggested combination.

Accordingly, Applicants respectfully submit that all finally rejected claims are patentable over the *currently* applied art of record.

The above amendments have nevertheless been made for the purpose of expediting prosecution and are not necessitated by the Examiner's rejections. The amendments are believed to define the claimed invention over the teachings of U.S. Patent No. 5,505,889 to *Davies* (cited in the concurrently filed IDS) which is mentioned at column 2, lines 44-49 of *Billarant*, as well as the teachings of *Billarant* found at column 3, lines 1-8 and 40-44. In particular, the amended claims are believed distinguishable from the *Billarant* non-woven fabric made by heat-bonding conjugate fibers that are manufactured by the process disclosed by and have the configurations shown in FIGs. 3-5 of the *Davies* reference.

Independent claim 1 now recites that, in each of said attaching areas, 4 to 16 of said second fibers are attached to one said first (elastic) fiber, which is deemed neither disclosed, taught nor suggested by *Billarant* and *Davies*. The newly added feature finds support in at least the original claims and FIG. 10C of the instant application. *Kobayashi* is not combinable with *Billarant/Davies* for the reasons advanced above with respect to the final rejections.

Independent claim 12 now recites that each of said first fibers has a cross section consisting of two convex portions and two concave portions alternatingly arranged in a circumferential direction of said cross section. The newly added feature finds support in the at least FIG. 10B of the

Application No.: 10/666,732Docket No.: 2038-297

instant application. *Billarant* and *Davies* do not appear to fairly teach or suggest the newly claimed invention. The Examiner alleges that *Billarant* teaches slitting the elastic fiber component at page 5, line 12 of the Office Action. Applicants respectfully disagree, because *Billarant* only teaches slitting the inelastic fiber (sheath). See *Billarant* at column 1, line 62, column 2, line 3 and column 4, lines 28-29. If the Examiner insists that *Billarant* teaches slitting the elastic fiber, she is kindly asked to cite column and line numbers of *Billarant* where the allegation can be found.

Independent claim 22 now recites that each of said convex portions has a region which is furthest from a central axis of said first fibers and which is exposed. In other words, in the invention of claim 22, the furthest region of each convex portions is exposed. This limitation finds support in at least FIGs. 3 and 10A-10C of the instant application. The *Billarant/Davies* disclosure lacks a teaching or suggestion that that the slits are necessarily formed through the inelastic sheath at regions corresponding to the convex portions, if any, of the elastic core. Therefore, the *Billarant* reference fails to teach or suggest that the convex portions, if any, of the elastic core are exposed.

The dependent claims, including new claims 27-28, are patentable at least for the reasons advanced with respect to the respective independent claims.

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Application No.: 10/666,732Docket No.: 2038-297

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN & BERNER, LLP

Benjamin J. Hauptman
Registration No. 29,310

Customer Number: 22429
1700 Diagonal Road, Suite 300
Alexandria, Virginia 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: March 20, 2006
BJH/klf